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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

* All papers shall be filed in the Lead
Case, No. 19-30088 (DM).

Bankruptcy Case No. 19-30088 (DM)
Chapter 11 (Lead Case) (Jointly Administered)

**APPLICATION OF DEBTORS PURSUANT TO 11
U.S.C. § 327(e) AND FED. R. BANKR. P. 2014(a)
AND 2016 AND THE COURT'S ORDER
AUTHORIZING THE DEBTORS TO EMPLOY
PROFESSIONALS USED IN THE ORDINARY
COURSE OF BUSINESS FOR AUTHORITY TO
RETAIN AND EMPLOY CLARENCE DYER &
COHEN LLP AS SPECIAL COUNSEL FOR THE
DEBTORS EFFECTIVE AS OF THE PETITION
DATE**

Date: August 25, 2020
Time: 10:00 a.m. (Pacific Time)
Place: (Telephonic or Video Appearances Only)
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: August 18, 2020, 4:00 p.m. (PDT)

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as
2 debtors and reorganized debtors (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned
3 chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Application (the “**Application**”),
4 pursuant to section 327(e) of title 11 of the United States Code (the “**Bankruptcy Code**”) and
5 Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for
6 authority to retain and employ Clarence Dyer & Cohen LLP (“**CDC**” or the “**Firm**”) as special counsel
7 for the Debtors effective as of the Petition Date (as defined below).

8 The Debtors request the Court approve the retention of CDC as the Debtors’ special counsel,
9 pursuant to section 327(e) of the Bankruptcy Code, to perform the Specific Matters (as defined below),
10 which CDC has performed for the Debtors prior to and during these Chapter 11 Cases in accordance
11 with CDC’s existing agreed-upon hourly rates in effect when services are rendered and CDC’s existing
12 reimbursement policies applicable to the Debtors.

13 On February 27, 2019, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328,*
14 *and 330 Authorizing the Debtors to Employ Professionals Used in the Ordinary Course of Business*
15 *Nunc Pro Tunc to the Petition Date* [Dkt No. 707] (the “**OCP Order**”) authorizing the Debtors to retain
16 and compensate legal services professionals that the Debtors employ in the ordinary course of business
17 (collectively, the “**Ordinary Course Professionals**”) subject to the terms of the OCP Order. CDC
18 served as counsel to the Debtors prior to the Petition Date and has continued to serve in such capacity
19 pursuant to the OCP Order. Pursuant to the OCP Order, the Debtors previously filed the *Declaration*
20 *and Disclosure Statement of Kate Dyer, On Behalf of Clarence Dyer & Cohen LLP* (the “**Prior Dyer**
21 **Declaration**”), annexed as Exhibit A-1 to the *Notice of Filing of List of Additional Ordinary Course*
22 *Professionals* [Dkt. No 2509].

23 Because the services the Debtors have asked CDC to perform in connection with the Specific
24 Matters have exceeded the caps set forth in the OCP Order, the Debtors seek approval of CDC as special
25 counsel in connection with the Specific Matters pursuant to section 327(e) of the Bankruptcy Code, *nunc*
26 *pro tunc* to the Petition Date, as contemplated by paragraph 2(ix) of the OCP Order. CDC has been paid
27 and will be paid its compensation pursuant to the terms of the OCP Order for all fees and expenses
28 incurred through January 31, 2020. CDC intends to apply for all compensation and reimbursement of

1 expenses for the period beginning February 1, 2020 through the procedures approved by the Court in the
2 *Order Pursuant to 11 U.S.C §§ 331 and 105(a) and Fed. R. Bankr. P. 2016 for Authority to Establish*
3 *Procedures for Interim Compensation and Reimbursement of Expenses of Professionals*, entered on
4 February 27, 2019 [Docket No. 701] (the “**Interim Compensation Procedures Order**”).

5 On June 20, 2020, the Court entered an Order [Docket No. 8053] (the “**Confirmation Order**”)
6 confirming the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated*
7 *June 19, 2020* [Docket No. 8048] (the “**Plan**”). The Plan became effective on July 1, 2020 [Docket
8 No. 8252]. This retention application relates solely to CDC’s post-petition services performed prior to
9 the effective date of the Plan that exceed the Annual Cap (as defined in the OCP Order), for which CDC
10 is not eligible to be compensated under the OCP Order. After the Debtors became aware that CDC
11 would exceed the Annual Cap, counsel for the Debtors approached the Office of the United States
12 Trustee to request that the Annual Cap be lifted for CDC, given that the Plan had already gone effective.
13 The guidance received from the U.S. Trustee was that CDC should file the appropriate applications for
14 retention and compensation.

15 In support of this Application, the Debtors submit the Declaration of Kate Dyer, a partner of the
16 Firm (the “**Dyer Declaration**”), and the Declaration of Janet Loduca, Senior Vice President and General
17 Counsel of PG&E Corp. (the “**Loduca Declaration**”), each of which is filed concurrently herewith, and
18 incorporate by reference the Prior Dyer Declaration (as supplemented by the Dyer Declaration). A
19 proposed form of order approving the retention and employment of CDC is annexed hereto as **Exhibit A**
20 (the “**Proposed Order**”).
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Clarence Dyer & Cohen LLP currently represents and/or advises PG&E in (i) the pre-petition Ghost Ship fire litigation pending in state court (the “**Ghost Ship Case**”); (ii) the pre-petition matter pending in federal court arising out of the imposition of a five-year term of probation and federal monitorship in January 2017 (the “**Federal Probation and Monitorship**” matter); and (iii) several other litigation and pre-litigation matters (together, (i) through (iii), the “**Specific Matters**”). The Specific Matters are described in more detail below.

Although CDC was approved and has been serving as an Ordinary Course Professional in the Chapter 11 Cases, recent developments—particularly in connection with increasing attention to the Ghost Ship Case and the Federal Probation and Monitorship—have compelled CDC to dedicate significantly more time to its representation of the Debtors, thus increasing CDC’s fees beyond the maximum allowable under the OCP Order.

As discussed below, CDC’s continued representation of PG&E in these matters, and specifically regarding its work on the Ghost Ship Case and the Federal Probation and Monitorship, was the most efficient and cost-effective path for the Debtors. For these reasons, the Debtors request that the Court grant this Application to retain CDC as special counsel.

II. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND ON PG&E MATTERS WHERE CDC IS COUNSEL

CDC has represented and continues to represent PG&E in the Specific Matters, as further discussed below.

1 **A. The Ghost Ship Case**

2 Following a tragic warehouse fire in Oakland in December 2016, families of fire victims, as well
3 as survivors, filed suits in Alameda County Superior Court. Pacific Gas and Electric Company and
4 PG&E Corporation were named as defendants in the Master Complaint filed on May 16, 2017, alleging
5 causes of action for negligence, premises liability, strict liability and nuisance. Fifty-three lawsuits are
6 pending, involving 78 plaintiffs, which have been related and are proceeding as *In re Ghost Ship Fire*
7 *Litigation*, Lead Case No. RG16843631 (and related cases) (Alameda County Superior Court). CDC
8 has represented PG&E in this matter since the case was filed.

9 The Ghost Ship Case was stayed as to PG&E upon PG&E's filing of these Chapter 11 cases on
10 January 29, 2019. On November 26, 2019, the Plaintiffs' Executive Committee appointed by the
11 Alameda Superior Court in the Ghost Ship Case filed a motion before this Court for relief from the
12 automatic stay. [See Docket No. 4875.] A hearing on the motion was held on December 17, 2019. On
13 January 6, 2020, the Court entered the *Order Re: Motion for Relief from Automatic Stay to Permit the*
14 *Courts of the State of California to Conduct a Jury Trial and Related Pretrial and Post Trial Matters in*
15 *Connection with the Ghost Ship Fire Cases* [Docket No. 5280].

16 Following the lifting of the stay, the Alameda County Superior Court set a trial date of October
17 19, 2020 in the Ghost Ship Case, and discovery and pretrial matters proceeded. On July 1, 2020, the
18 Court moved the trial to February 1, 2021 in light of the parties' progress toward resolution and the
19 pandemic's impact on jury trial calendaring.

20 **B. Federal Probation and Monitorship**

21 On April 1, 2014, Pacific Gas and Electric Company was indicted in the Northern District of
22 California on multiple counts alleging violation of federal pipeline safety regulations. After conviction
23 on six of twelve counts in 2016, PG&E was sentenced to a five-year term of probation and a federal
24 monitorship in January 2017. PG&E's probation and monitorship will continue through January 2022
25 and are being actively managed by United States District Court Judge William H. Alsup. CDC has
26 represented PG&E in this matter since April 2015.

1 **C. Other Matters**

2 Since October 2017, CDC has represented and advised PG&E in connection with certain
3 potential and actual criminal investigations relating to a series of fires that occurred in Northern
4 California in the fall of 2017 and the November 2018 Camp Fire. With PG&E's guilty plea and
5 sentencing in Butte County in June 2020, these matters have concluded. In addition, since December
6 2019, CDC has been advising PG&E in connection with issues and litigation arising out of pre-petition
7 wrongful termination and retaliation claims made by five former PG&E employees.¹ CDC also
8 represents PG&E in a post-petition action brought on November 20, 2019 for negligence and breach of
9 contract arising out an alleged reduction in gas service volume. *New Leaf Family Farms, Inc. v. Pac.*
10 *Gas & Elec. Co., Monterey County Superior Court Case No. 19-CV-004685*. Finally, CDC is advising
11 PG&E in connection with an April 2019 electric incident in Solano County and a May 2020 low-pressure
12 gas leak in San Joaquin County.

13 **IV. SCOPE OF SERVICES**

14 By this Application, the Debtors seek to engage CDC as special counsel to provide professional
15 services in connection with the Specific Matters. As noted above, the Specific Matters consist primarily
16 of advising and/or representing the Debtors regarding (1) the Ghost Ship Case; (2) the Federal Probation
17 and Monitorship; and (3) the Other Matters.

18 As to the Ghost Ship Case, CDC's representation of PG&E has included, without limitation,
19 overall case management, development of legal strategy, conducting and responding to discovery,
20 appearing and participating at hearings, drafting and responding to motions and briefs, working with
21 experts and consultants, preparing PG&E's case for trial, and participating in potential settlement efforts.

22 As to the Federal Probation and Monitorship, CDC's representation of PG&E has included,
23 without limitation, drafting sections of responses to multiple orders from Judge Alsup and coordinating
24

25 ¹ On November 20, 2019, one of these former employees, Todd Hearn, filed before this Court a motion
26 for relief from stay (Dkt. 4820), which motion the Court granted on February 25, 2020 (Dkt. 5893).
27 On April 9, 2020, PG&E and the other four former employees filed a stipulation for limited relief from
28 the automatic stay (Dkt. 6722), which the Court approved on May 6, 2020 (Dkt. 7083). Mr. Hearn
filed a lawsuit on June 1, 2020 alleging wrongful termination and retaliation. *Todd Hearn v. Pacific
Gas and Electric Company, Napa County Superior Court Case No. 20-CV-000391*.

1 with co-counsel regarding sections of responses drafted by co-counsel; preparing for and participating
2 in probation hearings; attending interviews conducted by the federal monitor and reviewing related
3 documents; preparing and reviewing detailed responses to requests for information from the federal
4 monitor; conducting legal research related to various probation and monitorship issues; and counseling
5 the company in relation to ongoing issues that impact the terms of probation, including ongoing
6 investigations into various wildfires.

7 As to the Other Matters, CDC's representation of PG&E with regard to the wildfire investigations
8 has included, without limitation, advising and representing PG&E in connection with potential or actual
9 criminal investigations and prosecutions, communicating and negotiating with the California Attorney
10 General and certain state District Attorney offices, coordinating with counsel representing PG&E in civil
11 and regulatory actions regarding the potential impact of those proceedings on the criminal investigations
12 and vice-versa. CDC's representation in the remaining matters has included, without limitation, factual
13 analysis, development of legal strategy, conducting and responding to discovery, appearing and
14 participating at hearings, preparing for trial, participating in potential settlement efforts and providing
15 advice and counsel.

16 CDC has also performed all other necessary legal services in connection with the matters
17 described above, and has also assisted, as requested, with matters related to these services as they may
18 affect the Chapter 11 Cases.

19 CDC has and continued to work closely with Weil, Gotshal, & Manges LLP, Cravath, Swaine &
20 Moore LLP, and Keller Benvenuti Kim LLP and PG&E's other professionals to maximize efficiency
21 and avoid any duplication of effort.

22 **V. CDC'S QUALIFICATIONS**

23 The Specific Matters for which CDC's retention is sought hereunder as special counsel are
24 substantially the same as those performed under the OCP Order; however, the scope of such services has
25 increased in connection with the Chapter 11 Cases, necessitating the filing of the Application.

26 CDC is exceptionally qualified with respect to litigation matters in general and with litigation
27 involving the Debtors in particular. CDC is a premier Bay Area litigation firm with decades of
28 experience providing aggressive, cost-effective representation to companies and individuals in complex

1 criminal and civil matters. CDC specializes in cases where its clients face parallel criminal, regulatory
2 and civil proceedings and delivers top-quality legal services in the responsive environment of a small
3 law firm. CDC's attorneys have represented both institutional and individual clients under investigation
4 by federal, state and local authorities across the United States and CDC has defended companies and
5 individuals in a wide array of state and federal civil actions ranging from mass tort to wrongful
6 termination to breach of contract matters. In addition, CDC has significant experience conducting
7 internal investigations for clients ranging from Fortune 200 corporations to small, family-owned
8 businesses.

9 Further, as noted above, CDC already has extensive experience advising and representing the
10 Debtors on the various pending litigation matters. In addition, prior to the Petition Date, CDC
11 represented the Debtors in several matters, acquiring considerable knowledge of Debtors' business and
12 operations. Accordingly, CDC is both well qualified and uniquely able to represent the Debtors in the
13 Chapter 11 Cases with respect to the Specific Matters.

14 **VI. COORDINATION WITH OTHER PROFESSIONALS**

15 CDC is aware that the Debtors have retained other law firms in connection with the Chapter 11
16 Cases, including in connection with various civil litigation matters. CDC has coordinated closely with
17 the Debtors and their other retained professionals to delineate the scope of services and avoid duplication
18 of services wherever reasonably possible.

19 **VII. NO ADVERSE INTEREST WITH RESPECT TO THE SPECIFIC MATTERS**

20 As set forth in the Dyer Declaration, incorporated herein by reference, CDC has disclosed any
21 representations of parties adverse to the Debtors that CDC has been able to determine as of the time of
22 filing this Application. In reliance on the Dyer Declaration, the Debtors believe that CDC does not
23 represent or hold an interest adverse to the Debtors or their estates with respect to the Specific Matters.
24 The Debtors believe that CDC's employment as special counsel with respect to the Specific Matters is
25 in the best interests of their estates and, accordingly, that CDC's retention pursuant hereto is appropriate
26 pursuant to section 327(e) of the Bankruptcy Code.

27 **VIII. PROFESSIONAL COMPENSATION**

28 Prior to the filing of this Application, CDC was compensated pursuant to the OCP Order.

1 Pursuant to the OCP Order, between the Petition Date and the date hereof, CDC has been paid in the
2 amount of \$1,049,494.10 on account of its post-petition fees and expenses. Currently, CDC is owed
3 approximately \$980,007.69 in fees and expenses on account of its post-petition services as an ordinary
4 course professional for the Debtors for the period of February 1, 2020 through July 1, 2020. This
5 Application seeks approval of CDC as special counsel in connection with the Specific Matters pursuant
6 to section 327(e) of the Bankruptcy Code, *nunc pro tunc* to the Petition Date, as contemplated by
7 paragraph 2(ix) of the OCP Order.

8 On October 7, 2019, CDC filed a proof of claim related a pre-petition claim held against the
9 Utility in the amount of \$121,007.00.

10 In accordance with the OCP Order, following entry of the order approving the Application (or,
11 in accordance with the OCP Order, for any prior period to the extent CDC's fees and expenses will
12 exceed the applicable caps set forth in the OCP Order), CDC will apply to the Court for allowances of
13 compensation and reimbursement of expenses in accordance with the applicable provisions of the
14 Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the *United States Bankruptcy*
15 *Court Northern District of California Guidelines for Compensation and Expense Reimbursement of*
16 *Professionals and Trustees*, effective February 19, 2014 (the "**Local Guidelines**"), the *U.S. Trustee*
17 *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed*
18 *under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective November 1, 2013 (the "**U.S.**
19 **Trustee Guidelines**," and together with the Local Guidelines, the "**Fee Guidelines**"), the OCP Order,
20 and any further Orders of the Court (the "**Orders**") for all professional services performed and expenses
21 incurred after the foregoing dates. CDC will seek allowance of its fees and reimbursement of its
22 expenses for all fees and expenses for the period beginning February 1, 2020.

23 Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local
24 Rules, the Fee Guidelines, and the Orders, the Debtors propose to compensate CDC for services rendered
25 at its customary hourly rates that are in effect from time to time, as set forth in the Sorensen Declaration,
26 and to reimburse CDC according to its customary reimbursement policies. The Debtors respectfully
27 submit that CDC's rates and policies stated in the Dyer Declaration are reasonable, particularly given
28 the nature of these Chapter 11 Cases.

1 **IX. NOTICE**

2 Notice of this Application will be provided to (i) the Office of the United States Trustee for
3 Region 17 (Attn: Andrew R. Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the Creditors
4 Committee; (iii) counsel to Tort Claimants Committee; (iv) the Securities and Exchange Commission;
5 (v) the Internal Revenue Service; (vi) the Office of the California Attorney General; (vii) the California
6 Public Utilities Commission; (viii) the Nuclear Regulatory Commission; (ix) the Federal Energy
7 Regulatory Commission; (x) the Office of the United States Attorney for the Northern District of
8 California; (xi) counsel for the agent under the Debtors' debtor in possession financing facility; and
9 (xii) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant
10 to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is required.

11 No previous request for the relief sought herein has been made by the Debtors to this or any other
12 Court.

13 WHEREFORE the Debtors respectfully request entry of an order (i) granting the relief requested
14 herein as a sound exercise of the Debtors' business judgment and in the best interests of the Debtors,
15 their estates, creditors, shareholders, and all parties in interest, and (ii) such other and further relief as
16 the Court may deem just and appropriate.

17 Dated: August 5, 2020

18 Respectfully submitted,

19
20 By: /s/ Janet Loduca

21 Name: Janet Loduca

22 Title: Senior Vice President and General Counsel
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